

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

AURELIO LOPEZ NUNEZ §  
v. § CIVIL ACTION NO. 6:06cv338  
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Petitioner Aurelio Nunez, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his confinement. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Nunez states that he was convicted of intoxication manslaughter and intoxication assault on May 23, 2005, receiving concurrent sentences of 20 years and 10 years in prison. He pleaded guilty and did not take a direct appeal, but sought state habeas corpus relief, which was denied.

Nunez argued that his plea of guilty was involuntary, his confession was coerced, and he received ineffective assistance of counsel. The Magistrate Judge ordered the State to answer Nunez's claims. Nunez did not file a reply to the answer.

After reviewing the pleadings and the state court records, the Magistrate Judge issued a Report on September 11, 2007, recommending that Nunez's petition be dismissed. The Magistrate Judge concluded that Nunez's counsel correctly advised him as to the potential sentence which he faced, that the plea of guilty was not involuntary, and that Nunez had failed to show any other basis

upon which to attack his plea of guilty. The Magistrate Judge also recommended that Nunez be denied a certificate of appealability *sua sponte*.

Nunez received a copy of the Magistrate Judge's Report on September 17, 2007, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings and records in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Magistrate Judge's Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Aurelio Nunez is DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all other motions which may be pending in this action are hereby DENIED.

**So ORDERED and SIGNED this 18th day of October, 2007.**



LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE